Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1459

THE SUN PUBLISHING COMPANY,
Petitioner,

versus

JAMES P. STEVENS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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Petitioner, The Sun Publishing Company, respectfully prays that a Writ of Certiorari be issued to review the Judgment and Opinion of the Supreme Court of the State of South Carolina entered in this proceeding on January 18, 1978.

(a)

OPINION BELOW

The Opinion of the Supreme Court of the State of South Carolina, Opinion No. 20584, filed January 18, 1978, is reported in 240 S.E.2d 812. Copy is attached as Appendix A. (Notes of Petitioner's Counsel attached) The order of the trial court (R. 235) is attached as Appendix B.

(b)

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(c). The judgment of the Supreme Court of the State of South Carolina, dated and entered January 18, 1978, violates the rights of Petitioner granted by the First and Fourteenth Amendments to the Constitution of the United States in respect to freedom of speech and of the press. There was no rehearing.

(c)

QUESTIONS PRESENTED FOR REVIEW

1. In an appeal from a libel judgment in favor of a public official, does the First Amendment requirement of *de novo* review of the constitutional sufficiency of the facts apply as well to State Appellate Courts as to the Supreme Court of the United States?

2. Did the Courts of South Carolina deny Petitioner newspaper the benefit and protection of the freedom of speech and of the press provisions of the First Amendment in granting and upholding this judgment against it in favor of Respondent State Senator based upon the publication of portions of a newspaper article claimed by him to be libelous, in that:

(a) The case was submitted to the jury and its verdict upheld without a finding by either the trial court or the Supreme Court of South Carolina that the evidence adduced by Respondent satisfied the constitutional standard of convincing clarity necessary to raise a jury question as to whether the statements complained of were false and defamatory statements of fact published with knowledge of falsity or a high degree of awareness of probable falsity;

(b) The Supreme Court of South Carolina applied its own scope of review on appeal, rejecting the *de novo* review of the issues of constitutional fact required under the said provisions of the First Amendment, and upheld the judgment against Petitioner on the ground that "a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings";

(c) The record lacks evidence meeting the constitutional standard of convincing clarity necessary to raise a jury question as to whether the statements complained of were published with actual malice, that is, with knowledge that they were false or with reckless disregard of whether they were false or not;

(d) The judgment was upheld despite the fact that it was based upon the publication of statements which were not statements of fact capable of proof or disproof but were merely statements of ideas, conclusions or opinions (expressly recognized as such in the last sentence of the Opinion of the Supreme Court of South Carolina).

3. Should this Court, in light of the handling of Petitioner's First Amendment rights in the State Courts of South Carolina, make an independent examination of the record "to make certain" that the principles applicable to Petitioner's conditional privilege thereunder "have been constitutionally applied", and "to assure . . . that the judgment does not constitute a forbidden intrusion on the field of free expression"?

(d)

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States:

Amendment I:

"Congress shall make no law . . . abridging the freedom of speech or of the press . . ."

Amendment XIV:

". . . (N)or shall any State deprive any person of life, liberty, or property, without due process of law . . ."

(e)

STATEMENT OF THE CASE

Respondent James P. Stevens, for many years a South Carolina State Senator, brought two complaints for libel (R. 3-18) against Petitioner Newspaper which were consolidated for trial (R. 1). The trial court sustained a $50,000 verdict for actual damages against the Petitioner which was upheld by the Supreme Court of South Carolina as shown by its Opinion (Appendix A).

Respondent's complaints were predicated upon two tidelands articles by Petitioner's reporter Monk which were published June 11, 1974, and July 15 and 17, 1974, respectively. Respondent Senator testified that in 1974 tidelands legislation was a "legislatively dominating issue" (R. 106, 107). Horry County, where Respondent resides and where Petitioner newspaper is published, is a coastal county.

Respondent's principal claim of libel was predicated upon statements bearing upon his involvement in the development of Sandy Island, located in a tidal navigable river. (R. 3-7) The trial court ruled at the close of all the

evidence that these statements were not libelous. (R. 232, 233)[1]

As a result of this ruling the case went to the jury on two make-weight claims of alleged libel predicated on portions of the article of July 15 and 17th.

The first of these two claims was based upon a portion of a statement made about Tom McLeod, Respondent's brother, by Marlene McLeod, his ex-wife. Tom McLeod (a/k/a Stevens and various other names) was actively involved in the Sandy Island Development. Marlene McLeod described her former husband as "an incredible con man and business manipulator who had ruined many people's lives", and said, among other things, that Respondent "has had nothing but headaches from his brother", adding that "James will do pretty much as Tom tells him. Tom uses James". (R. 12, 221) There was no dispute that the ex-sister-in-law was accurately quoted.[2] Tom McLeod was not a party and did not testify.

Marlene McLeod's statement as to the relationship between the brothers was obviously a matter of her opinion, as was Respondent's opinion to the contrary. (R. 64) Certainly neither was a statement of fact susceptible of proof or disproof. Under all the evidence, including that of Respondent himself, Marlene McLeod's statements about

---

[1] In his direct examination Respondent testified that after the June 11th article appeared he had told Monk that he "had no part of developing Sandy Island Development Corporation" and that "in my opinion that article is libelous and I will not do anything about it, but if you put anything else in the newspaper then I intend to sue, and then this article [July 15th and 17th] came out". (R. 61)

"Q. And did you sue?
A. Yes, sir.
Q. You kept your word?
A. "Yes, sir". (R. 61-62)

The litigation thus threatened consisted of two libel actions for $50,000,-000.00 each.

[2] Not only did Mrs. McLeod testify she was accurately quoted (R. 115, 119), but she said the Senator had told her that her ex-husband was a "con man" (R. 120, 121) and that every time he heard from Tom, Tom was in "trouble of some kind" and "in one jam after another"; Tom's power over James was so strong" (R. 120). Tom had businesses all over the country (R. 116 et seq.), at one time had "three or four hundred salesmes" (R. 118), and actually loaned the Senator the money for the Sandy Island investment. (R. 111)

her ex-husband and the relationship of the brothers were not false but were in all material respects true, as will be hereinafter shown.

The other of the two claims submitted to the jury was based upon the portion of the article of July 15th which reads:

> Even before the public had knowledge of the legal conflict over dredging operations at Sandy Island, a complex lawsuit against Sandy Island Corporation involving transfer of stock was brought by Marlene McLeod.
>
> Growing out of this lawsuit is another suit which charges Sen. Stevens, one of the most powerful state legislators, with an abuse of his political power.
>
> In March, 1973, he is alleged to have helped pressure an Horry County magistrate into issuing two unlawful warrants for Marlene McLeod's arrest. She had been summoned to Horry County in order to give a deposition in the earlier lawsuit. (R. 16-17, 224)

Of this portion of the article the South Carolina Supreme Court's Opinion said:

> It also incorrectly stated respondent was being sued for abuse of political power.

Respondent himself testified that he had been sued alleging that he "had helped pressure an Horry County magistrate into issuing two unlawful warrants for Marlene McLeod". (R. 68)

Given the fact that Respondent was the State Senator for Horry County and was charged in the litigation with having helped pressure an Horry County magistrate into issuing illegal warrants, the reporter's conclusion that the suit charged abuse of policital power on the part of Respondent was clearly a reasonable one well within the leeway of a layman reporter under *Pennekamp v. Florida*, 328 U.S. 331 (1946). *Cf.* Piracci v. *Hearst Corp.* 263

F.Supp. 511 (D. Md. 1966) aff. 371 F.2d 1016 (4Cir. 1967).

Federal Questions Were Raised and Preserved

The federal questions sought to be reviewed were raised by Petitioner at the first opportunity in its Answer (R. 21) and were thereafter raised and preserved at each subsequent opportunity: in its motion for a nonsuit at the close of Respondent's evidence (R. 225); in its motion for a directed verdict at the close of all the evidence (R. 227); in its motion for judgment *non obstante veredicto* after the return of the verdict against it (R. 233); and in the Exceptions in its Appeal to the Supreme Court of South Carolina (R. 244, 245).

In its Answer to Respondent's complaints (R. 19-21) Petitioner denied that the articles complained of were false or defamatory and pleaded as a defense to the actions that Respondent "is an elected public official of the State of South Carolina, holding the office of State Senator, and that the articles referred to in the Amended Complaint concerned matters of public interest and debate", and "that said publications are privileged under the laws of the State of South Carolina *and of the United States as an expression of the right of free speech and free press*". (Emphasis added) (R. 21)

Petitioner's motions for nonsuit, directed verdict, and judgment *non obstante veredicto* were each made upon the ground that Respondent had failed to show "that the newspaper articles about him as a public official" were published with knowledge of their alleged falsity or with reckless disregard of the truth thereof, and therefore, Petitioner is "not liable in damages for publication under the provisions of the First Amendment to the Constitution of the United States relating to freedom of speech and of the press"; that the articles "on their face are not defamatory" of Respondent; and that under the evidence the

articles "were in all material respects substantially true". (R. 225, 227, 233-4)

Opinion Below

1. The Opinion of the Supreme Court of South Carolina incorrectly states that Petitioner's exceptions on appeal all relate to the denial of its motion for judgment *non obstante veredicto*. On the contrary, the exceptions themselves all show that they first charged error in denying Petitioner's motion for a directed verdict. Petitioner thus challenged the sufficiency of the proof, under the constitutional standard of convincing clarity, to raise a jury question whether the publications complained of were false and defamatory and made with knowledge that they were false (if indeed false) or with reckless disregard of whether they were true or false. (R. 244)

2. According to the Opinion, the Court's scope of review in a case of this nature is limited to the correction of errors of law; a factual finding will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings; and the evidence and all inferences deducible therefrom are reviewed in the light most favorable to the party opposing a motion for judgment N.O.V.

In its "limited review" the Court reviewed the judgment here as it would a judgment in an ordinary negligence case. It does not consider whether the proof "satisfies the constitutional standard with the convincing clarity necessary to raise a jury question" (*Rosenbloom v. Metromedia,* 403 U.S. 29, 54, 55); nor is there any discussion, or even notice taken, of the abundant evidence, including Respondent's own testimony, showing the truth of the challenged statements (e.c. R. 64, 66, 68, 40, 80, 95-99, 66, 110, 111-112); nor does the Court refer to any evidence thought by it to warrant or support a finding that the challenged statements were in fact untrue, or that (if untrue) Petitioner was aware of any probability that the articles were false in any respect.

3. Although the Court disavowed jurisdiction so to do, it said it was assuming without deciding that Petitioner is entitled to a *de novo* review of the issues of "constitutional fact", and then states its belief that "appellant published the instant articles with reckless disregard of the falsity of their contents".

"Falsity" is apparently assumed by the Court without discussion of that issue and with no reference to or discussion of any fact thought to bear upon the issue.

By its reliance upon the quotation made by it from *St. Amant v. Thompson,* the Court shows that it misapprehends the holding in that case.[3]

The witness Heniford's references to "something 'juicy' to print" and to Marlene McLeod's "bias and credibility" were related to her marital difficulty with and divorce from Tom McLeod, and not to Respondent. His reference to the reporter's statement that the Sun News did not like James Stevens was immaterial on the issue of actual malice. *Cf. Letter Carriers v. Austin,* 418 U.S. 264, 281, and cases cited.

4. The Opinion's concluding statement that "this Court declines to extend constitutional protection to articles containing blatantly false statements and opinions of a biased informant which imply improper conduct by a public official" is based upon assumptions which are without support in the record or in the First Amendment decisions rendered since *New York Times v. Sullivan.* It is significant, however, that the South Carolina Supreme Court rec-

[3] The statement broadcast by St. Amant was made by a union member about his local union's president with whom he was engaged in a bitter controversy. Thompson, a deputy sheriff, complained of a reference to him in the union member's statement about the local's president. Although the union member was an "obviously biased" informant, this Court held that "By no proper test of reckless disregard was St. Amant's broadcast a reckless publication about a public official". Factually, *St. Amant* is strikingly parallel to the instant case.

ognizes that the statements upon which this libel judgment is based were opinions as asserted by Petitioner.

(f)

REASONS FOR THE WRIT

The Federal constitutional law of libel declared in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and later cases dealing with actions brought by public officials, will be of little effect in South Carolina unless certiorari is granted in this case and the opinion and judgment of the Supreme Court of South Carolina reversed.

In *Greenbelt Coop. Pub. Assn. v. Bresler*, 398 U.S. 6 (1970), this Court stated:

> As we noted in New York Times, "[t]his Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied . . . We must 'make an independent examination of the whole record', . . . so as to assure ourselves that the judgment does not constitute a forbidden instrusion on the field of free expression". 376 U.S., at 285.

In light of the failure of both the trial and appellate courts of South Carolina to recognize and apply the First Amendment principles which should have governed this decision, we respectfully submit that this is a proper case for such examination and review by this Court.

The record shows that Petitioner published the second tidelands article after it was threatened with litigation by Respondent State Senator if it did so. (It was conceded by him that tidelands was a "legislatively dominating issue"). (R. 106) He boasted on the witness stand that he "kept his word" by the bringing of these two suits, in which the demands totalled One Hundred Million Dollars. (R. 61, 62)

Ironically, Petitioner "won the tidelands war" when the trial court held that the tidelands content of the articles was not defamatory as asserted by Respondent. (R. 233) Nevertheless, Petitioner is mulcted in damages for $50,000.00 based upon two trivial non-meritorious claims of libel, with little or no evidence of actual injury or damage therefrom.

This is the first public official case considered and decided by the South Carolina Supreme Court under the First Amendment and *New York Times Co. v. Sullivan. Cf. Oswalt v. State-Record Co.*, 250 S.C. 429, 158 S.E.2d 204 (1967).

It is fair to say that, if this Opinion were allowed to stand and be precedent for the administration of First Amendment principles in libel actions brought by public officials as in the instant case, neither the press nor the people in South Carolina will enjoy the benefit of those constitutional principles in respect to public debate and critical examination of the qualifications, and the actions in office, of their public officials.

I

The South Carolina Courts Did Not Apply The Constitutional Standard Of "Convincing Clarity" Nor Accord De Novo Review

Ignoring the principles above referred to, the South Carolina Courts did not require Respondent State Senator to prove a calculated falsehood (serious doubts of truth) by proof of convincing clarity. The constitutional standard is not even mentioned either in the trial court's Order or in the Supreme Court's Opinion.

The Order of the trial court, in reference to Petitioner's motions for nonsuit, directed verdict, and judgment *non obstante veredicto* (R. 235), stated:

> . . . In passing upon motions for nonsuit, directed verdict, and judgment n.o.v., the evidence and all in-

ferences reasonably deduced therefrom must be taken *most strongly* against the moving party and considered in the light most favorable to the nonmoving party". (R. 236)

Further, the trial court held:

> In the instant case, the record is replete with testimony which, reviewed in the light most favorable to the plaintiff, together with the reasonable inferences to be deducted therefrom, *tends to show* that defendant's articles were published with actual malice". (R. 238)

Further, the trial court said:

> A complete review of the record would reveal numerous additional instances *reasonably tending* to establish actual malice on the part of the defendant, but no further instances are treated herein. (R. 239)

Thus, instead of adopting the Constitutional standard that plaintiff public official must prove his case by *"clear and convincing proof"* both the trial court and the Supreme Court of South Carolina adopted the standard that the evidence and all inferences therefrom must be taken most strongly against the defendant and considered in the light most favorable to the plaintiff; that the evidence need merely *"tend* to show"; need not show by proof of convincing clarity; that the evidence *"reasonably tended* to establish" rather than established by proof of convincing clarity.

In taking the case to the State Supreme Court, Petitioner's second Exception read:

> The presiding judge erred in denying the defendant's motion for a directed verdict and its motion for a judgment *non obstante veredicto,* the error assigned being that the *evidence failed to establish by clear and convincing proof* that the publication complained of was false and that defendant either knew the publication was false (if it was false) or had a high degree of awareness of the probability of its falsity. (R. 244)

But in its Opinion the Supreme Court of South Carolina adopted the same erroneous view of the law as that set forth in the Order of the trial court; held that the court reviewed the evidence and all reasonable inferences therefrom in the light most favorable to the plaintiff; held that the jury's verdict was *supported,* rather than holding it was *supported by proof of convincing clarity;* and held that the jury verdict would not be disturbed unless the record discloses "that there is *no evidence* which *reasonably* supports the jury's findings" as distinguished from imposing upon the plaintiff the burden of establishing Constitutional malice by proof of *convincing clarity.* (Appendix A)

Thus, the Supreme Court of South Carolina ignored and disregarded the Constitutional requirement that the State Senator libel plaintiff here must prove his case by *proof of convincing clarity.*

II

The Libel Claims are Without Merit on De Novo Review

(1)

Publication Was in Good Faith and Substantially Accurate

Petitioner published a substantially accurate account. The record shows that Petitioner publisher accurately quoted the Senator's sister-in-law Marlene McLeod (R. 115, et seq.). Although all of the parties were obviously biased in this family dispute (R. 170), the reporter made a good faith attempt to, and did, make a thorough investigation. His investigation was far reaching (R. 157, et seq.). In his testimony Reporter Monk detailed the various sources of information on which he relied. These included

the United States Attorney's Office; the Federal Court Clerk's office; the records of the State County Clerk's office; a number of news articles including the UPI; the Charlotte Observer, a number of South Carolina papers; the St. Petersburg, Florida, Times; a Florida newspaper reporter who visited South Carolina and wrote a long article about Tom McLeod, the Senator's brother; the pleadings in the State and Federal court lawsuits in which Marlene McLeod and the Senator were parties; Marlene McLeod herself; Tom McLeod's son, John; officers and directors of Sandy Island Corporation; HUD officials in Washington; and others. (R. 157, et seq.)

The reporter testified that he telephoned the Senator the night before the article appeared to get his side of the story. The reporter started asking the Senator about the Sandy Island development and the Senator said that "he had already talked to me about that and he didn't want to talk to me about it again". Monk then asked about the Marlene McLeod suit and the Senator said "that's pending in court. I don't have any comment on that . . ."

(2)

Marlene McLeod's References To Respondent Were Not Actionable In Law or Fact

Respondent based a claim of libel on a statement not made directly about him but upon a reference to him in a statement made by Marlene McLeod about her ex-husband who was Respondent's brother.

Marlene McLeod's statement that Respondent "had had nothing but headaches from his brother" was borne out by Respondent in his direct examination:

> I can't exactly deny that. There has been times when I tried to assist my brother. He would come home and he would need my assistance and I tried to assist him. He's my brother and that's that. (R. 64)

As to her statement that "James will do pretty much as

Tom tells him", Respondent stated in his direct examination:

> That's absolutely false. If anybody can influence him, I think it was me, instead of the other way. (R. 64)

The statement was clearly a matter of opinion on Marlene McLeod's part, and Respondent's opinion, "I think it was me, instead of the other way" was an opinion to the contrary. Certainly the statement was not one of fact susceptible of proof or disproof.

Her statement "Tom uses James" either connoted Marlene McLeod's opinion that Tom takes advantage of his brother, or was a factual statement amply sustained by Respondent's testimony on both direct and cross-examination as to how much his services were used by Tom and performed for him.

As to both statements, Respondent testified on direct examination (R. 66) that everything he ever did for his brother about which Marlene McLeod had knowledge "was legal and not questionable at all". He testified on cross-examination (R. 111) that he had represented Tom many, many times, adding "if he requested me—he was my brother—and I was happy to do it, yes"; and that "there were simply many things that your brother asked you to do . . . that you did for him" as long as they were honest. (R. 112)

Marlene McLeod went no further in the statements about the relationship and dealings between the brothers than Respondent himself did in his testimony. She did not say or suggest that Respondent ever did anything illegal or dishonest for his brother.

The testimony of the Respondent as to the relationship and dealings between him and his brother shows the truth of her statement that "Tom uses James". Respondent testified that his brother lent him the money to buy his stock in the Sandy Island Corporation (R. 111); that although

he was opposed to the sale to the Development Corporation and to the Sandy Island's development (R. 50, 51), he was asked to and did endorse the note of the Development Corporation for $100,000.00 (R. 75); that he borrowed the money for the purchase of the dragline with which Heniford worked on the canals for the Development Corporation (R. 40, 80); that he was involved in his brother's efforts to get his own child's stock (R. 95-99); that he issued the notice to take the deposition of Marlene McLeod as a result of which his brother procured illegal warrants for her arrest where she was forced to appear in South Carolina (R. 98-99); that he put up $8,000.00 for his brother and his wife in a boat transaction and stood good for the sale of the boat (R. 66, 111); that when his brother was in debt he would ask Respondent to write to people to say that he would pay them at a later date (R. 110); and that there were many other things his brother asked him to do and that he did for him "as long as they were honest". (R. 111-112)

We respectfully submit that Marlene McLeod's references to Respondent in her statement made about his brother were not defamatory and were not made so by artful but distorted innuendo, *Cf. Greenbelt Coop. Pub. Assn. v. Bresler,* 398 U.S. at 14; that they were merely opinions and not statements of fact capable of proof or disproof; *Cf. Letter Carriers v. Austin,* 418 U.S. at 284, *Gertz v. Welch,* 418 U.S. at 339; and that even if considered as statements of fact the evidence, and especially that of Respondent himself, showed them not to be false, but to be true in all material respects.

(3)

As To Description
Of The Charge Alleged In The Lawsuits

Except for the fact that one of the Federal Court complaints contained allegations that Respondent was State Senator having functions in respect to the appointment of

magistrates in Horry County, the two complaints were identical. (See: Appendix C & Appendix D)

Respondent characterized in his testimony the charge in the first complaint as being "that I had helped pressure an Horry County Magistrate into issuing two unlawful warrants for Marlene McLeod". (R. 68)

Reporter Monk, knowing Respondent to be State Senator for Horry County, interpreted this to be a charge in each complaint as being abuse of political power on Respondent's part.

This conclusion of the reporter was well within the leeway of a lay reporter reporting on legal proceedings. As pointed out in *Pennekamp v. Florida,* 328 U.S. 331, 371 (1946), any standard which would require "strict accuracy in reporting legal events factually or in commenting upon them in the press would be an impossible one". *Cf. Piracci v. Hearst Corp.,* 263 F.S. 511 (D.Md. 1966), aff. 331 F.2d 1016 (4 Cir., 1967); *New York Times Co. v. Sullivan,* 376 U.S. 254, 292, n.30 (1964).

(4)

As To Source's "Obvious Bias"

In the first place, the "obvious bias" of Marlene McLeod which the witness Heniford is quoted as telling the reporter about was in relation to her domestic difficulties with Respondent's brother , her ex-husband, and not to Respondent. (R. 31, 47)

The State Supreme Court's quotation from *St. Amant v. Thompson* on which it relies in its discussion of "reckless disregard" is shown by that very case not to be applicable to the instant case. St. Amant's source was obviously biased and partisan but the Court held:

> By no proper test of reckless conduct was St. Amant's broadcast a reckless publication about a public official.

If "obvious bias" of a source or informant in respect to

a matter reported on is to be taken as evidence of "reckless disregard", then a publisher can no longer safely report on any matter which is controversial on the basis of information from persons who may be concerned in any side of the controversy (even though extensively investigated as in the instant case).

We respectfully submit that the law is otherwise. *Cf. New York Times Co. v. Sullivan; St. Amant v. Thompson; Greenbelt Coop. Pub. Assn. v. Bresler; Time, Inc. v. Pape; New York Times v. Connor,* (5 Cir.) 365 F.2d 567 (1966); *Vandenberg v. Newsweek, Inc.,* (5 Cir.) 507 F.2d 1024 (1975); *Time, Inc. v. Johnston* (4 Cir.) 448 F.2d 378 (1971).

CONCLUSION

It is respectfully submitted that the questions presented for review are meritorious; that such questions are of general importance in the Federal constitutional law applying to libel actions brought by public officials, as well as to Petitioner and others engaged in carrying on newspaper business in South Carolina; and that proper consideration of the proof in this case under the correct principles applicable under the First Amendment will warrant the reversal of the challenged judgment.

For the reasons hereinabove set forth, it is respectfully prayed that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. .....

THE SUN PUBLISHING COMPANY,
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APPENDIX

THE STATE OF SOUTH CAROLINA
In The Supreme Court

James P. Stevens, *Respondent,*

versus

The Sun Publishing Company, *Appellant.*

Appeal From Horry County
Wade S. Weatherford, Jr., *Judge*

Opinion No. 20584

Filed January 18, 1978

AFFIRMED

William L. Pope, of Robinson, McFadden, Moore & Pope, of Columbia; McCutcheon & McCutcheon, of Conway; and Wahl & Gable, of Jacksonville, Florida, for appellant.

J. M. Long, Jr., of Conway, for respondent.

NESS, A. J.: This appeal is from a jury verdict of $50,000.00 actual damages rendered in a libel suit instituted by respondent James P. Stevens against appellant, The Sun Publishing Company. We affirm.

Respondent Stevens served as State Senator for Horry County from 1955 to 1976. The Sun Publishing Company owns and publishes two newspapers, The Field and Herald

and The Sun News, in which the allegedly libelous articles appeared.

Stevens was one of seven stockholders of Sandy Island Corporation which purchased approximately 4,000 acres of Sandy Island in Georgetown County in 1964. Among the other stockholders were the Chairman of the Horry County Airport Commission, the Mayor of North Myrtle Beach, and respondent's brother, Tommie Stevens a/k/a Thomas McDuffie McLeod.

Four of the seven stockholders of Sandy Island Corporation, including Tommie Stevens, subsequently formed Sandy Island Development Corporation to develop a portion of the island purchased from Sandy Island. Respondent was *not* a stockholder of the development corporation. The allegedly libelous articles concerned respondent's involvement with Sandy Island and the activities of his brother Tommie.

During dredging operations performed by the development corporation, controversy arose between the U. S. Corps. of Engineers and the Corporation. A cease and desist order was issued by the Corps to halt allegedly unlawful dredging operations, but was voided by a federal judge. As a result of this litigation and the general interest in tidelands matters in the area, public interest was generated in the events surrounding Sandy Island's development.

The allegedly libelous articles reprinted in the transcript of record from The Sun News was entitled "Sandy Island Purchase Start of Legal Tangle." Apart from providing a general history of the pertinent Sandy Island activities, the article discussed the involvement of respondent's brother, Tommie Stevens, in the venture. Characterizing him as "a colorful Florida ex-millionaire," the article referred to Tommie Stevens' "hazy background" of business dealings. The following excerpt from the Tampa Tribune, quoted in The Sun News article is a representative sample of the overall tenor of the description of respondent's brother:

"Tampa businessman wheeler-dealer Tom McLeod, 54, who came tc town in 1967, left last month with a figurative suitcase full of thousand dollar bills, apparently from last minute business dealings which arc being legally questioned." (Tr. p. 219)

The article also explored McLeod's (nee Stevens') marital problems. His ex-wife, Marlene McLeod, was quoted at length, not only with respect to her former husband but also regarding his relationship with respondent. Ms. McLeod referred to her ex-husband as "an incredible con man and business manipulator who had ruined many people's lives." She made the following comments about McLeod's relationship with respondent:

"James (Stevens) has had nothing but headaches from his brother . . . James will do pretty much as Tom tells him. Tom uses James." (Tr. p. 221).

Thus the article implied Senator Stevens was being manipulated by his con-man brother. It also incorrectly stated respondent was being sued for abuse of political power.

The exceptions raised by appellant all relate to the denial of its motion for judgment *non obstante veredicto.* Appellant asserts the publications were not defamatory of respondent and were protected under the First and Fourteenth Amendments to the U. S. Constitution and by Article 1, Section 1 of the South Carolina Constitution.

Pursuant to Townes Associates, Ltd. v. City of Greenville, 266 S. C. 81, 85, 221 S. E. 2d 773, 775 (1976), our scope of review in a case of this nature is limited. As we stated in *Townes,*

"1. In an action at law, on appeal of a case tried by a jury, the jurisdiction of this Court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. Odom v. Weathersbee, 225 S. C. 253, 81 S. E. 2d 788 (1954)."

Moreover, under settled principles, we review the evidence and all reasonably inferences deducible therefrom in the light most favorable to the party opposing the motion for judgment N.O.V. Graham v. Suggs, et al., Smith's 12/5/77, Opinion No. 20557; also see decisions collected in 3 S. C. Digest, Appeal & Error, Key No. 933(1).

Upon so viewing the evidence, we find the jury's verdict to be supported by the record. There is ample testimony which, if believed, would satisfy the actual malice requirement of New York Times v. Sullivan, 376 U. S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), which established the law of defamation on a broad principled First Amendment basis.

However, appellant asserts a publisher of an allegedly defamatory statement is entitled under the First Amendment to a *de novo* review of the entire record on appeal. This contention is based on Rosenbloom v. Metromedia, Inc., 403 U. S. 29, 91 S. Ct. 1811, 1825, 29 L. Ed. 2d 296 (1971), where the Court stated "First Amendment questions of 'constitutional fact' compel this Court's *de novo* review." While at least one court[1] has agreed with appellant's interpretation that the above language imposes a *de novo* scope of review on *all* appellate courts, we find it unnecessary to rule on that question.

Assuming, without deciding, appellant is entitled to a *de novo* review of the record by this Court, judgment would still be rendered for respondent. An individual's status as a public figure does not immunize a publisher from liability when it prints defamatory articles with malice. Adhering to the Court's two-pronged definition of malice in New York Times, *supra,* we believe appellant published the instant articles with reckless disregard of the falsity of their contents.

John Monk, the author of the allegedly libelous articles, used the respondent's former sister-in-law, Marlene Mc-

[1] See Fadell v. Minneapolis Star & Tribune Company, Inc., 557 F. 2d 107 (7th Cir. 1977).

Leod, as one of his primary sources. Monk admitted recognizing Ms. McLeod's obvious bias. As was stated in St. Amant v. Thompson, 390 U. S. 727, 88 S. Ct. 1323, 1326, 20 L. Ed. 2d 262, 267 (1968):

> "[R]ecklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports."

Further evidence of actual malice was supplied by the witness Davis Heniford. Heniford stated Monk told him he had something "juicy" to print about respondent, and that Monk admitted to him the Sun News did not like James Stevens. Heniford testified he told Monk that Marlene McLeod's information was biased, unreliable, and untrue, and that publication of the article would damage respondent. Despite this admonition, Monk printed the article without further investigation.

In Curtis Publishing Company v. Butts, 388 U. S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967), the Supreme Court found "reckless disregard" where the defamatory matter was not "hot news" and was published on the basis of information garnered from a source known to be suspect. As in this case, the story was printed without substantial independent support.

The article concerning Senator Stevens was not "hot news" and was printed despite warnings to its author concerning its falsity. We believe actual malice is established when reporters and publishers depart from responsible standards of investigation and print articles on the basis of an admittedly unreliable source, without further verification.[2]

---

[2] Reporter Monk admitted on cross-examination that he had only spoken once by telephone with Marlene McLeod prior to writing the article. (Tr. p. 173). He also conceded he sought no independent verification of her statement that respondent was being used by Tommie Stevens. (Tr. p. 176).

As was stated in Gertz v. Welch, Inc., 418 U. S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789:

> "[T]here is no constitutional value in false statements of facts. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues."

Accordingly, this Court declines to extend constitutional protection to articles containing blatantly false statements and opinions of a biased informant which imply improper conduct by a public official.

AFFIRMED.

LEWIS, C. J., LITTLEJOHN, RHODES and GREGORY, J. J., concur.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

James P. Stevens, Plaintiff,

vs.

The Sun Publishing Company, Defendant.

COURT OF COMMON PLEAS

ORDER

This matter is before me upon motion of the defendant asking for judgment *non obstante veredicto*. The grounds are set forth in particular as follows:

1. That Plaintiff has failed to show that the newspaper articles about him as a public official which he claims to be false and defamatory were published by the defendant with knowledge of such alleged falsity or with reckless disregard of the truth thereof, and therefore, the Defendant is not liable in damages for its publication under the provisions of the First Amendment to the Constitution of the United States relating to freedom of speech and of the press.

2. That the newspaper articles complained of are, on their face, not defamatory of the Plaintiff either in law or in fact.

3. That under the evidence the newspaper articles complained of were in all material respects substantially true.

4. That the newspaper articles complained of involved matters of public interest and related to Plaintiff as a public official and were, therefore, qualifiedly privileged, and Plaintiff has failed to show that there was actual malice on the part of the Defendant in its publication.

5. That the statements in the newspaper articles complained of which relate to actions filed in court are substantially accurate reports of the contents of pleadings on file in judicial proceedings, and as such, their publication is absolutely privileged.

6. That there was no competent evidence presented at the trial as to any damages sustained by Plaintiff as a result of the articles complained of.

7. That no judgment could be rendered against Sun Publishing Company as it was not a party to this action and the court was in error in permitting amendment of the complaint to add it as a Defendant.

This motion is made under Circuit Court Rule 79. It is well settled that a motion under this rule invokes the jurisdiction conferred upon the judge to review his decision on a previous motion for a directed verdict. *Grooms v. Zander*, 246 S. C. 512, 144 S.E.2d 909 (1965). The motion for judgment notwithstanding the verdict goes back to the point in the trial when a motion was made for a directed verdict, and is limited to those grounds. *Standard Warehouse Co. v. Atlantic Coast Line R. Co.*, 222 S. C. 93, 71 S.E. 2d 983 (1952). In passing upon motions for nonsuit, directed verdict, and judgment n.o.v., the evidence and all inferences reasonably deduced therefrom must be taken most strongely against the moving party and considered in the light most favorable to the non-moving party. *Kelly v. City of Arhen*, 245 S. C. 503, 141 S.E.2d 651 (1965), *Wright v. Gilbert*, 227 S. C. 334, 88 S.E.2d 72 (1955), *Grier v. Cornelius*, 247 S. C. 521, 148 S.E.2d 338 (1966).

Defendant's grounds number 1 and 4 are predicated upon the same basis, namely that the plaintiff, a public official, has failed to show "actual malice" by the defendant in its publication of the allegedly defamatory articles as is required under these circumstances by *New York Times v. Sullivan*, 376 U. S. 254, 11 L.ed. 2d 686 (1962) and

Garrison v. Louisana, 379 U.S. 64, 13 L.ed. 2d 125, 85 S.Ct. 209 (1964).

"Actual malice" has become a term of art to provide a convenient shorthand for the *New York Times* standard of liability. It is quite different from the common law standard of "malice" generally required under the state tort law to support an award of punitive damages. Whereas, the common law standard focuses on the defendants attitude toward the plaintiff, "actual malice" concentrates on the defendants attitude toward the truth or falsity of the material published.

> "Malice, in actions for libel or slander, is of two kinds: implied malice or malice in law, and actual malice or malice in fact.
>
> 'Malice in law, or legal malice, is a presumption of law and dispenses with the proof of malice when words raise such presumption are shown to have been uttered. This form of malice is not necessarily inconsistent with an honest or even laudable purpose and does not imply ill will, personal malice, hatred, or a purpose to injure.'
>
> While implied malice will support an award of actual damages, punitive damages cannot be recovered in the absence of proof of actual malice.
>
> Actual malice or malice in fact is not presumed and must be proved. Actual malice means that the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff rights. See: *Rogers v. Florence Printing Co.*, 233 S. C. 567, 106 S. E. (2d) 258. *Jones v. Garner*, 250 S. C. 479, 158 S. E. 2d 909.

In the instant case, the record is replete with testimony which, reviewed in the light most favorable to the plaintiff,

together with the reasonable inferences to be deduced therefrom, tends to show that defendant's articles were published with actual malice. The articles were written by one John Monk, a reporter for the Sun-News, a daily newspaper owned and operated by the defendant, Sun Publishing Company. Prior to printing the article, Monk had never met the plaintiff, and had spoken to him on the telephone only twice. Monk admitted that he knew that Marlene McLeod, an informant from whom he garnered much of the information for his story, was an obviously biased person. In *St. Amant v. Thompson*, 390 U. S. 737, 20 L.ed. 2d 267, the U. S. Supreme Court said that:

> Profession of good faith will be unlikely to prove persuasion (on the issue of actual malice) when a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified, anonymous phone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them into circulation. Likewise recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports . . . 390 U. S. 732, 20 L.ed. 2d 267.

The witness, Davis Heniford, was especially damaging to defendant on the issue of malice. Heniford stated that Monk told him he had something "juicy" to print about the plaintiff, and that Monk admitted to him the Sun-News did not like James Stevens. Heniford stated he in effect told Monk that Marlene McLeod's information was biased, unreliable, and untrue. He stated he told Monk that plaintiff was a completely honest politician and that he (Monk) would hurt plaintiff by publishing the contemplated article.

A complete review of the record would reveal numerous additional instances reasonably tending to establish actual malice on the part of the defendant, but no further instances are treated herein. This Court is fully satisfied that

the issue of actual malice was for the jury, and that ample evidence existed for their finding.

The defendant alleges in paragraph 2 of its motion that the newspaper articles complained of are, on their face, not defamatory of the plaintiff either in law or in fact.

Without setting forth the portions of the alleged libelous matters, this Court battled with the question of whether the words expressed were "libelous per se". However, acting with an abundance of precaution and in conformity with all the cited cases, the question was submitted to the jury for its determination.

The South Carolina definition of "defamatory matter" is substantially in accord with that given the term by courts in other American jurisdictions. In *Hartzog v. United Press Associate*, 202 F.2d 81, 82 (4th Cir. 1953) the Court quoted with approval United States District Judge Wyche's definition in *Lesesne v. Willingham*, 88 F. Supp. 918, 921 E.D.S.C. (1949):

> It seems to be settled in this State (South Carolina) that any words which falsely or maliciously charge the commission of a crime, or which distinctly assume or imply one has committed a crime, or which raise a strong suspicion in the minds of hearers or readers, that one has committed a crime or which plainly and falsely charge the contraction of a contagious disease, adultery or want of chastity, or unfitness in the way of a profession or trade, or any written or printed words which tend to degrade a person, that is, to reduce his character or reputation in the estimation of his friends or acquaintances or the public, or to disgrace him, or to render him odious, contemptible, or ridiculous, are actionable per se.
>
> Alleged defamatory words used must be given their ordinary popular meaning, and if they are susceptible of two meanings, one slanderous and the other innocent, it must be left to the jury to determine from all of the circumstances attending the publication in what sense the defendant used them. *Jones v. Garner*, 250 S. C. 479.

The defendant in paragraph 3 of the motion states that under the evidence the newspaper articles complained of were in all material respects substantially true.

"Under the evidence", it was for the jury to decide as to whether the newspaper articles were substantially true. Evidence adduced showed that the reporter knew some of the material of the article came from "an obviously biased person". Other testimony and evidence showed that the reporter exceeded that right which is reserved to report "privileged matters".

The defendant cites in support of this question the case of *Piracci v. Hearst Corporation*, 263 F. Supp. 511 (1966) affirmed 371 F. 2d 1016, where the following is stated:

> In order to substantiate the defense of truth, it is not necessary that the article be free from any inaccuracy. The law requires nothing more than substantial accuracy in the significant portions of the article. Mistakes with no legal significance so far as the content of the story is concerned do not detract from the defense of truth.

It is the opinion of this writer that the record discloses ample inaccuracies of legal significance sufficient to submit the case to the jury upon this ground.

Defendant's ground number 5 is insufficient in itself to constitute a ground for judgment *non obstante veredicto* since it deals solely with those portions of the allegedly defamatory articles "which relate to actions filed in court". A substantial portion of the articles does not relate in any manner to an action filed in any court.

In any event, the privilege as to the contents of pleadings does not extend to unfair and incorrect statements of the pleadings. It was, therefore, for the jury to determine

whether the articles references to court procedings and characterization of the pleadings exceeded the privilege. Likwise, where the publisher acts maliciously, the privilege would not protect him. As previously pointed out, the record contains numerous instances reasonably tending to show malice in defendant's publication.

The defendant's next ground in paragraph 6 of the motion was that there was no competent evidence presented at the trial as to any damages sustained by the plaintiff as a result of the articles complained of.

> Where actual malice is shown by a public figure attempting to recover for libel, presumed and punitive damages are recoverable if applicable state law permits such damages special damages need not be shown. *John W. Carson v. Allied News Company,* 529 Fed. Rep. 2d 206 (Jan. 23, 1976)

South Carolina has always followed the rule that actual and punitive damages are recoverable where the article complained of is activated by malice and is libelous per se, and no damages need be proven.

> Written words tending to diminish the respectability of the person to whom they relate, and to expose him to disgrace and obloquy, although they do not impute the commission of a crime, are libelous and actionable, although no special damages are alleged or proven. *Flood v. News and Courier,* 71 S. C. 116. (See also *Rogers v. Florence Printing Co.,* 233 S. C. 567, 106 S. E. 2d 258; *Jones v. Garner,* 250 S. C. 479, 158 S. E. 2d 909).

Notwithstanding the above rule in this state, there is evidence in the record showing special damages, which shows loss of income as an attorney.

Defendant's ground number 7 challenges the Court's decision to permit an amendment of the complaint to reflect the proper corporate name of the defendant. Since this ground was not a part of defendant's motion for a directed verdict, it is not properly before the court on this motion for judgment n.o.v.

Even if this ground were properly before the court, defendant's contention must still fail. Prior to the time of trial, the Court permitted an amendment of the complaint naming the Sun News Publishing Company as a defendant. The plaintiff had originally named as defendants, The Sun-News and The Field and Herald in two separate suits, they being the trade names under which the Sun Publishing Company operates.

Section 10-692 of *South Carolina Code of Laws of 1962* permits liberal amendment of pleadings by the court. Defendants' attorneys have previously prosecuted an unsuccessful appeal to the Supreme Court in this case on behalf of the Sun-News. They have also submitted an answer in the case of *James P. Stevens v. Field and Herald, et al.,* which answer is verified by an individual as president of "Sun-News, Inc."

The issue here is whether this Court may amend the pleadings to reflect the proper corporate name of the defendant. I can conceive of no manner in which the defendant is prejudiced by the amendment.

See *Sentell v. Southern Ry.,* 67 S. C. 229 (1903) where the corporation answered as to the merits and raised a plea of misnomer after the action was barred. See also *Long v. Carolina Baking Co.,* 193 S. C. 225 (1939) where the Court held:

> A corporation, as well as individuals, may have or be known by several names in the transaction of its general business so that it may enforce, as well as be bound by, contracts entered into in an adopted name other than the regular name under which it was incorporated.

For the foregoing reasons, the motion for judgment *non obstante veredicto* is hereby denied.

/s/ WADE S. WEATHERFORD, JR.
Presiding Judge, Fifteenth
Judicial Circuit

October 20, 1976.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

MARLENE B. McLEOD, Plaintiff,

vs.

JAMES P. STEVENS, WENDELL E. JONES, MILTON CLEMONS and DAVIS HENIFORD, individually, and as officers, directors and stockholders of SANDY ISLAND CORPORATION, a corporation, and THOMAS M. McLEOD, also known as Thomas M. Stevens, Defendants.

C/A 73-1627

COMPLAINT

The plaintiff, complaining of the defendants, alleges:

FOR A FIRST CAUSE OF ACTION:

1. That the jurisdiction of this Court is invoked pursuant to the provisions of Title 28, U.S.C., Sections 1331 and 1343; and Title 42, U.S.C., Sections 1983, 1985(3) and 1986. The amount in controversy exceeds Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs.

2. That the defendant, Sandy Island Corporation, is and was at all times hereinafter alleged, a corporation organized and existing under the laws of South Carolina with its principal office in Horry County, South Carolina; that the defendants, Stevens, Jones, Clemons and Heniford are individuals and are now and at all times hereinafter alleged, were officers, directors and stockholders of Sandy Island Corporation; that the defendant, Thomas M. McLeod, also known as Thomas M. Stevens, is a resident of Horry County, South Carolina.

3. That the defendant, James P. Stevens, is the South Carolina State Senator resident in Horry County, South Carolina; that pursuant to Section 53-551, 1962 S. C. Code, the Horry County Police Commission is appointed by the Governor of South Carolina upon the recommendation of a majority of the County Legislative Delegation, including the Senator; that pursuant to Section 53-553, 1962 S. C. Code, the Chief of County Police and eight County Policemen are appointed by the Horry County Police Commission; that the Horry County Police Commission which was incumbent in March, 1973, was appointed by the Governor of South Carolina upon the recommendation of a majority of the Horry County Legislative Delegation, including the defendant, James P. Stevens, as Horry County Senator; that as a matter of fact, no person can be appointed to the Horry County Police Commission without the consent and approval of James P. Stevens; that as a matter of fact no person is appointed to the Horry County Police Force without the approval of James P. Stevens.

4. That pursuant to Section 43-1, 1962 S. C. Code, the Horry County Magistrates are appointed by the Governor by and with the advice and consent of the resident Horry County Senator; that the Magistrate of Green Sea District, Horry County, incumbent in March, 1973, was appointed by the Governor by and with the advice and consent of the defendant, James P. Stevens; that as a matter of fact, no Magistrate can be appointed to office in Horry County without the recommendation of James P. Stevens and his confirmation of the gubernatorial appointment in the South Carolina State Senate; that in March, 1973, there was an action pending in the Court of Common Pleas for Horry County, South Carolina, entitled: "Marlene B. McLeod, individually and as guardian of Michele McLeod, a minor, Plaintiff v. Sandy Island Corporation, a corporation, and J. Bryan Floyd, Milton Clemons, Davis Heniford, Jr., Wendel E. Jones and James P. Stevens, as officers and directors of Sandy Island Corporation, a corporation, and

Thomas M. McLeod, also known as Thomas M. Stevens, individually and as a director of Sandy Island Corporation, a corporation, Defendants."

5. That the said state court action was brought against the named defendants to establish the ownership of certain Sandy Island Corporation stock as being in Michele McLeod, the daughter of the plaintiff; that the issues in that action had been resolved in favor of the plaintiff in that action by the State Circuit Court and the South Carolina Supreme Court, with the exception of whether the stockholders of Sandy Island Corporation had the right to buy the stock before it could be transferred to someone else.

6. That the plaintiff is a resident of Tampa, Florida; that the defendants, for the purpose of getting her within the jurisdiction of the Horry County Magistrates and the Horry County Police, and for the purpose of depriving her of her civil rights, served Notice to Take Deposition on her attorney in the action pending in the South Carolina Courts alleged in Paragraph 4 above, which required her to appear in the Courtroom, Horry County Courthouse, Conway, South Carolina, at 10 o'clock A.M. on March 22 1973, to give her deposition; that under the Circuit Court Rules of South Carolina it was mandatory that the plaintiff appear and give her deposition at the appointed time and place.

7. That the plaintiff did appear in the Horry County Courthouse at the time and place and gave her deposition as required; that prior to plaintiff's giving her deposition, and on the same date of March 22, 1973, the defendant, under color of law, through their agents, servants and employees, did require the Magistrate of Green Sea District of Horry County to issue two unlawful arrest warrants, charging the plaintiff with the crime of forgery in Richland and Lexington Counties, South Carolina; that the defendants knew that such warrants were unlawful; that such

action on their part was willful, wanton and malicious; that immediately after plaintiff gave her deposition under the direction of the defendants, said arrest warrants were delivered to the Horry County Police which served the said warrants on the plaintiff herein, placed the plaintiff under arrest, took her into custody and carried her to the Horry County Jail; that in order to regain her freedom, the plaintiff was required to post Five Thousand ($5,000.00) Dollars in bonds.

8. That at the time the warrants were issued by the Horry County Magistrate, the defendants knew they were unlawful and were advised by the Horry County Magistrate that they were unlawful, but at the insistence of the defendants, through their agents, servants and employees, the Magistrate issued the warrants and the same were served as herein alleged.

9. That the plaintiff has been subjected because of the above recited acts to the deprivation by the defendants, under color of law, of rights, privileges and immunities secured to her by the Constitution and Laws of the United States and particularly her right to be free from unlawful arrest and imprisonment and to be free from such action on the part of the defendants, her rights to security of person and freedom from arrest, except upon probable cause, and her rights not to be deprived of liberty without due process of law, guaranteed by the Fifth and Fourteenth Amendments to the said Constitution, her rights reserved or retained under the Ninth and Tenth Amendments to said Constitution and plaintiff's right to the equal protection of the laws guaranteed under the Fourteenth Amendment of said Constitution, in violation of 42 U.S.C., Section 1983.

10. That plaintiff alleges that as the direct consequences and result of the acts of the defendants hereinabove complained of, plaintiff was deprived of her liberty for a substantial period of time, suffered much anxiety and dis-

tress, much discomfort and embarrassment, her reputation was impaired and she was required to spend substantial sums of money in defending herself from the charges against her, all to her damage in the amount of Five Hundred Thousand ($500,000.00) Dollars, actual and punitive damages.

FOR A SECOND CAUSE OF ACTION:

1. That plaintiff realleges and adopts by reference Paragraphs 1 through 9 respectively of the First Cause of Action of this Complaint.

2. That plaintiff alleges that in doing the acts and things above complained of, the defendants were conspirators and engaged in a scheme and conspiracy designed and intended to deny and deprive her of rights guaranteed the plaintiff under the Constitution and Laws of the United States and particularly those hereinabove enumerated in violation of Title 42, U.S.C., Section 1985.

3. That plaintiff alleges that as the direct consequences and result of the acts of the defendants hereinabove complained of, plaintiff was deprived of her liberty for a substantial period of time, suffered much anxiety and distress, much discomfort and embarrassment, her reputation was impaired and she was required to spend substantial sums of money in defending herself from the charges against her, all to her damage in the amount of Five Hundred Thousand ($500,000.00) Dollars.

FOR A THIRD CAUSE OF ACTION:

1. That plaintiff realleges and adopts by reference Paragraphs 1 through 9 respectively of the First Cause of Action of this Complaint.

2. That plaintiff alleges that the defendants jointly and severally had knowledge of the wrongs conspired to be done and were about to be committed and had the power

to prevent or aid in preventing the commission of the same and they neglected and refused to do so; that such wrongful acts were committed and by reasonable diligence on the part of one or more of the defendants could have been prevented, which they failed to do, in violation of Title 42, U.S.C., Section 1986.

3. That plaintiff alleges that as the direct consequences and result of the acts of the defendants hereinabove complained of, plaintiff was deprived of her liberty for a substantial period of time, suffered much anxiety and distress, much discomfort and embarrassment, her reputation was impaired and she was required to spend substantial sums of money in defending herself from the charges against her, all to her damage in the amount of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, plaintiff prays for judgment against the defendants in the amount of One Million, Five Hundred Thousand ($1,500,000.00) Dollars.

/s/ BURROUGHS, GREEN, SASSER AND HUDSON
Attorneys for Plaintiff

Conway, S. C.
December 6, 1973

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

MARLENE B. McLEOD, Plaintiff,

vs.

JAMES P. STEVENS, WENDELL E. JONES, MILTON CLEMONS and DAVIS HENIFORD, and THOMAS M. McLEOD, also known as Thomas M. Stevens, Defendants.

C/A 74-238

COMPLAINT

The plaintiff, complaining of the defendants, alleges:

FOR A FIRST CAUSE OF ACTION:

1. That the plaintiff is a resident of the State of Florida; that the defendants are residents of Horry County, South Carolina. The amount involved herein is in excess of $10,000.00.

2. That in March 1973, there was an action pending in the Court of Common Pleas for Horry County, South Carolina, entitled "Marlene B. McLeod, individually, and as quardian of Michele McLeod, a minor, plaintiff vs. Sandy Island Corporation, a corporation, and J. Bryan Floyd, Milton Clemons, Davis Heniford, Jr., Wendel E. Jones and James P. Stevens, as officers and directors of Sandy Island Corporation, a corporation, and Thomas M. McLeod, also known as Thomas M. Stevens, individually and as a director of Sandy Island Corporation, a corporation, defendants."

3. That the said State Court action was brought against the named defendants to establish the ownership of certain Sandy Island Corporation stock as being in Michele

McLeod, the daughter of the plaintiff; that the issues in that action had been resolved in favor of the plaintiff in that action by the State Circuit Court and the South Carolina Supreme Court, with the exception of whether the stockholders of Sandy Island Corporation had the right to buy the stock before it could be transferred to someone else.

4. That the defendants, for the purpose of getting the plaintiff within the jurisdiction of the Horry County Magistrate's and the Horry County Police, and for the purpose of depriving her of her freedom, served Notice to Take Deposition on her attorney in the action pending in the South Carolina Courts alleged in Paragraph 2 above, which required her to appear in the Courtroom, Horry County Courthouse, Conway, South Carolina, at 10 o'clock A.M. on March 22, 1973, to give her deposition; that under the Circuit Court Rules of South Carolina it was mandatory that the plaintiff appear and give her deposition at the appointed time and place.

5. That the plaintiff did appear in the Horry County Courthouse at the time and place and gave her deposition as required; that on the same date of March 22, 1973, the defendants, jointly and severally, through their agents, servants and employees, did instigate the issuance of two arrest warrants by the Magistrate of Green Sea District of Horry County, which arrest warrants were unlawful, charging the plaintiff with the crime of forgery in Richland and Lexington Counties, South Carolina; that the defendants knew that such warrants were unlawful; that such action on their part, jointly and severally, was willful, wanton and malicious and made for the purpose of depriving the plaintiff of her freedom and causing her much humiliation, embarrassment and mental anguish; that immeditly following the giving of her deposition at the time and place and on said date, the defendants, through their agents, servants and employees, did cause the Horry County Police to serve the said warrants on the plaintiff herein,

place the plaintiff under arrest, take her into custody and carry her to the Horry County Jail; that in order to regain her freedom, the plaintiff was required to obtain the services of an attorney and to post $5,000.00 in bonds.

6. That at the time the warrants were issued by the Horry County Magistrate, the defendants knew that they were unlawful and were so advised by the Horry County Magistrate that they were unlawful, but at the insistence of the defendants, through their agents, servants and employees, the Magistrate issued the said warrants and the same were served as herein alleged, resulting in the denial of plaintiff her freedom, causing her much embarrassment, humiliation, mental anguish and monetary damage.

7. That the arrest warrants under which the Horry County Police assumed to act were illegal and void in that the Magistrate of Green Sea District, Horry County, had no jurisdiction to order plaintiff's arrest for the reason that Horry County Magistrates' jurisdiction is limited to the commission of alleged crimes within the geographical limits of Horry County.

8. That on May 23, 1973, pursuant to plaintiff's motion to vacate the arrest warrants, the Magistrate of Green Sea District, Horry County, South Carolina, ordered the dismissal of said arrest warrants.

9. That by reason of the false imprisonment of the plaintiff by the defendants, their agents, servants or employees, the plaintiff was deprived of her liberty, was subjected to scorn, ridicule, humiliation and embarrassment, was required to retain the services of an attorney, file appearance bonds and suffer mental anguish for a long period of time, all to her damage in the sum of Five Hundred Thousand ($500,000.00) Dollars, actual and punitive damages.

FOR A SECOND CAUSE OF ACTION:

1. That the plaintiff is a resident of the State of Florida; that the defendants are residents of Horry County, South Carolina. The amount involved herein is in excess of $10,000.00.

2. That in March, 1973, there was an action pending in the Court of Common Pleas for Horry County, South Carolina, entitled "Marlene B. McLeod, individually, and as guardian of Michele McLeod, a minor, plaintiff vs. Sandy Island Corporation, a corporation, and J. Bryan Floyd Milton, Clemons, Davis Heniford, Jr., Wendel E. Jones and James P. Stevens, as officers and directors of Sandy Island Corporation, a corporation, and Thomas M. McLeod, also known as Thomas M. Stevens, individually and as a director of Sandy Island Corporation, a corporation, defendants."

3. That the said State Court action was brought against the named defendants to establish the ownership of certain Sandy Island Corporation stock as being in Michele McLeod, the daughter of the plaintiff; that the issues in that action had been resolved in favor of the plaintiff in that action by the State Circuit Court and the South Carolina Supreme Court, with the exception of whether the stockholders of Sandy Island Corporation had the right to buy the stock before it could be transferred to someone else.

4. That the defendants, for the purpose of getting the plaintiff within the jurisdiction of the Horry County Magistrate's and the Horry County Police, and for the purpose of depriving her of her freedom, served Notice to Take Deposition on her attorney in the action pending in the South Carolina Courts alleged in Paragraph 2 above, which required her to appear in the Courtroom, Horry County Courthouse, Conway, South Carolina, at 10 o'clock A.M. on March 22, 1973, to give her deposition that under the Circuit Court Rules of South Carolina it was manda-

tory that the plaintiff appear and give her deposition at the appointed time and place.

5. That the plaintiff did appear in the Horry County Courthouse at the time and place and gave her deposition as required; that on the same date of March 22, 1973, the defendants, jointly and severally, through their agents, servants and employees, did instigate the issuance of two arrest warrants by the Magistrate of Green Sea District of Horry County, which arrest warrants were unlawful, charging the plaintiff with the crime of forgery in Richland and Lexington Counties, South Carolina; that the defendants knew that such warrants were unlawful; that such action on their part, jointly and severally, was willful, wanton and malicious and made for the purpose of depriving the plaintiff of her freedom and causing her much humiliation, embarrassment and mental anguish; that immediately following the giving of her deposition at the time and place and on said date, the defendants, through their agents, servants and employees, did cause the Horry County Police to serve the said warrants on the plaintiff herein, place the plaintiff under arrest, take her into custody and carry her to the Horry County Jail; that in order to regain her freedom, the plaintiff was required to obtain the services of an attorney and to post $5,000.00 in bonds.

6. That at the time the warrants were issued by the Horry County Magistrate, the defendants knew that they were unlawful and were so advised by the Horry County Magistrate that they were unlawful, but at the insistence of the defendants, through their agents, servants and employees, the Magistrate issued the said warrants and the same were served as herein alleged, resulting in the denial of plaintiff her freedom, causing her much embarrassment, humiliation, mental anguish and monetary damage.

7. That the arrest warrants under which the Horry County Police assumed to act were illegal and void in that the Magistrate of Green Sea District, Horry County,

had no jurisdiction to order plaintiff's arrest for the reason that Horry County Magistrates' jurisdiction is limited to the commission of alleged crimes within the geographical limits of Horry County.

8. That on May 23, 1973, pursuant to plaintiff's motion to vacate the arrest warrants, the Magistrate of Green Sea District, Horry County, South Carolina, ordered the dismissal of said arrest warrants.

9. That by reason of the malicious prosecution of the plaintiff by the defendants, their agents, servants or employees, the plaintiff was deprived of her liberty, was subjected to scorn, ridicule, humiliation and embarrassment, was required to retain the services of an attorney, file appearance bonds and suffer mental anguish for a long period of time, all to her damage in the sum of Five Hundred Thousand ($500,000.00) Dollars, actual and punitive damages.

WHEREFORE, plaintiff prays for judgment against the defendants in the amount of One Million ($1,000,000.00) Dollars, actual and punitive damages.

/s/ BURROUGHS, GREEN, SASSER AND HUDSON
Attorneys for Plaintiff

Conway, S. C.
February 11, 1974

(Black facing and notes added by Counsel)

The State of South Carolina

IN THE SUPREME COURT

JAMES P. STEVENS, Respondent,

vs.

THE SUN PUBLISHING COMPANY, Appellant.

APPEAL FROM HORRY COUNTY

WADE S. WEATHERFORD, JR., *Judge*

Opinion No. 20584

Filed January 18, 1978

AFFIRMED

William L. Pope, of Robinson, McFadden, Moore & Pope, of Columbia; McCurcheon & McCurcheon, of Conway; and Wahl & Gable, of Jacksonville, Florida, for appellant.

J. M. Long, Jr., of Conway, for respondent.

NESS, A. J.: This appeal is from a jury verdict of $50,000.00 actual damages rendered in a libel suit instituted by respondent James P. Stevens against appellant, The Sun Publishing Company. We affirm.

Respondent Stevens served as State senator for Horry County from 1955 to 1976. The Sun Publishing Company

owns and publishes two newspapers, The Field and Herald and The Sun News, in which the allegedly libelous articles appeared.

Stevens was one of seven stockholders of Sandy Island Corporation which purchased approximately 4,000 acres of Sandy Island in Georgetown County in 1964. Among the other stockholders were the Chairman of the Horry County Airport Commission, the Mayor of North Myrtle Beach, and respondent's brother, Tommie Stevens a/k/a Thomas McDuffie McLeod.

Four of the seven stockholders of Sandy Island Corporation, including Tommie Stevens, subsequently formed Sandy Island Development Corporation to develop a portion of the island purchased from Sandy Island Corporation. Respondent was *not* a stockholder of the development corporation. The allegedly libelous articles concerned respondent's involvement with Sandy Island and the activities of his brother Tommie.

During dredging operations performed by the development corporation, controversy arose between the U. S. Corps of Engineers and the Corporation. A cease and desist order was issued by the Corps to halt allegedly unlawful dredging operations, but was voided by a federal judge. As a result of this litigation and the general interest in tidelands matters in the area, public interest was generated in the events surrounding Sandy Island's development.

The allegedly libelous articles reprinted in the transcript of record from The Sun News was entitled "Sandy Island Purchase Start of Legal Tangle." Apart from providing a general history of the pertinent Sandy Island activities, the article discussed the involvement of respondent's brother, Tommie Stevens, in the venture. Characterizing him as "a colorful Florida ex-millionaire," the article referred to Tommie Stevens "hazy background" of business dealings. The following excerpt from the Tampa Tribune, quoted in The Sun News article is a representative sample

of the overall tenor of the description of respondent's brother:

> "Tampa businessman wheeler-dealer Tom McLeod, 54, who came to town in 1967, left last month with a figurative suitcase full of thousand dollar bills, apparently from last minute business dealings which are being legally questioned." (Tr. p. 219). (*See Counsel's Note A at end of Opinion*)

The article also explored McLeod's (nee Stevens') marital problems. His ex-wife, Marlene McLeod, was quoted at length, not only wth respect to her former husband but also regarding his relationship with respondent. Ms. McLeod referred to her ex-husband as "an incredible con man and business manipulator who had ruined many people's lives." She made the following comments about McLeod's relationship with respondent:

> "James (Stevens) has had nothing but headaches from his brother . . . James will do pretty much as Tom tells him. Tom uses James." (Tr. p. 221). (*See Counsel's Note B.*)

Thus the article *implied* Senator Stevens was being manipulated by his con-man brother. It also incorrectly stated respondent was being sued for abuse of political power. (*See Note C.*)

The exceptions raised by appellant all relate to the denial of its motion for judgment *non obstante veredicto*. Appellant asserts the publications were not defamatory of respondent and were protected under the First and Fourteenth Amendments to the U. S. Constitution and by Article 1, Section 1 of the South Carolina Constitution. (*See Note D.*)

Pursuant to Townes Associates, Ltd. v. City of Greenville, 266 S. C. 81, 85, 221 S. E. 2d 773, 775 (1976), *our scope of review in a case of this nature is limited.* As we stated in *Townes,* (*See Note E.*)

> "1. In an action at law, on appeal of a case tried by a jury, *the jurisdiction of this Court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings.* Odom v. Weathersbee, 225 S. C. 253, 81 S. E. 2d 788 (1954)."

Moreover, under settled principles, we review the evidence and all reasonably inferences deducible therefrom *in the light most favorable to the party opposing* the motion for judgment N.O.V. Graham v. Suggs, et al., Smith's 12/5/77, Opinion No. 20557; also see decisions collected in 3 S. C. Digest, Appeal & Error, Key No. 933(1). (*See Note E.*)

Upon so viewing the evidence, we find the jury's verdict to be *supported* by the record. There is ample testimony which, *if believed,* would satisfy the actual malice requirement of New York Times v. Sullivan, 376 U. S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), which established the law of defamation on a broad principled First Amendment basis. (*See Note E.*)

However, appellant asserts a publisher of an allegedly defamatory statement is entitled under the First Amendment to a *de novo* review of the entire record on appeal. This contention is based on Rosenbloom v. Metromedia, Inc., 403 U. S. 29, 91 S. Ct. 1811, 1825, 29 L. Ed. 2d 296 (1971), where the Court stated "First Amendment questions of 'constitutional fact 'compel this Court's *de novo* review." While at least one court[1] has agreed with appellant's interpretation that the above language imposes a *de novo* scope of review on *all* appellate courts, *we find it unnecessary to rule* on that question. (*See Note F.*)

Assuming, without deciding, appellant is entitled to a *de novo* review of the record by this Court, judgment would still be rendered for respondent. An individual's

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[1] See Fadell v. Minneapolis Star & Tribune Company, Inc., 557 F. 2d 107 (7th Cir. 1977).

status as a public figure does not immunize a publisher from liability when it prints defamatory articles with malice. Adhering to the Court's two-pronged definition of malice in New York Times, *supra,* we *believe* appellant published the instant articles with reckless disregard of the falsity of their contents. (*See Note E.*)

John Monk, the author of the allegedly libelous articles, used the respondent's former sister-in-law, Marlene McLeod, as one of his primary sources. Monk admitted recognizing Ms. McLeod's obvious bias. As was stated in St. Amant v. Thompson, 390 U. S. 727, 88 S. Ct. 1323, 1326, 20 L. Ed. 2d 262, 267 (1968):

> "[R]ecklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." (*See Note G.*)

Further evidence of actual malice was supplied by the witness Davis Heniford. Heniford stated Monk told him he had something "juicy" to print about respondent, and that Monk admitted to him the Sun News did not like James Stevens. Heniford testified he told Monk that Marlene McLeod's information was biased, unreliable, and untrue, and that publication of the article would damage respondent. Despite this admonition, Monk printed the article without further investigation. (*See Note H.*)

In Curtis Publishing Company v. Butts, 388 U. S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967), the Supreme Court found "reckless disregard" where the defamatory matter was not "hot news" and was published on the basis of information garnered from a source known to be suspect. As in this case, the story was printed without substantial independent support. (*See Note I.*)

The article concerning Senator Stevens was not "hot news" and was printed despite warnings to its author concerning its falsity. We believe actual malice is established when reporters and publishers depart from responsible standards of investigation and print articles on the basis

of an admittedly unreliable source, without further verification.[2] (*See Note I.*)

As was stated in Gertz v. Welch, Inc., 418 U. S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789:

> "[T]here is no constitutional value in false statements of facts. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues." (*See Note J.*)

Accordingly, this Court declines to extend constitutional protection to articles containing blatantly false statements and *opinions* of a biased informant which *imply* improper conduct by a public official. (*See Notes B and E.*)

AFFIRMED. (*See Note K.*)

LEWIS, C. J., LITTLEJOHN, RHODES and GREGORY, J. J., concur.

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[2] Reporter Monk admitted on cross-examination that he had only spoken once by telephone with Marlene McLeod prior to writing the article. (T. p. 173). He also conceded he sought no independent verification of her statement that respondent was being used by Tommie Stevens. (T. p. 176). (*See Note H.*)

COUNSEL'S NOTES, NOT IN COURT OPINION, BUT APPENDED BY COUNSEL FOR PETITIONER

A. Tom McLeod (Stevens) did not sue or even appear at the trial.

B. These are obviously expressions of opinion, conclusions or ideas under *Gertz*. In the final paragraph of its opinion, the South Carolina Supreme Court expressly characterizes Mrs. McLeod's "opinions". In addition the Senator confirmed his troubles with his brother, concluding simply "He's my brother and that's it". (R. 64).

C. The Senator himself testified he had been sued alleging that he "had helped pressure an Horry County Magistrate into issuing two unlawful warrants for Marlene McLeod". (R. 68). Cf. *Pirarci v. Hearst* (D.C. Md. 1966) 263 F. Supp. 511, affirmed on District Court opinion (CA4-1967) 371 F. 2d 1016.

D. The Constitutional questons were raised by Answer (R. 21), by motion for non-suit at close of plaintiff's testimony (R. 2, 225), by motion for directed verdict at close of all the case (R. 2, 227), by motion for judgment n.o.v. (R. 233), and in Exceptions on Appeal to South Carolina Supreme Court (R. 244—Appendix D).

E. This holding that the South Carolina Supreme Court in reviewing a First Amendment libel suit is *limited* to the review provided for South Carolina negligence cases, is a glaring flagrant, egregious error which so stands out. The South Carolina Supreme Court completely disregarded the rule that a public official libel plaintiff must prove by *clear and convincing proof*, or proof of *convincing clarity*, that the defendant had published a story about the public official know to be false or about which it had serious doubts as to truth—in effect as set up in *Curtis*, 388 U.S. at 153,

"calculated falsehood". The South Carolina court does not even mention the clear and convincing evidence rule but cites numerous South Carolina cases directly to the contrary which put the burden on the defendant, whereas under *New York Times* the burden is on the plaintiff.

Note the references to the appellate review being *"limited"*, that all evidence and reasonable inferences must be reviewed in the light *most favorable* to the plaintiff; that the jury's verdict is *"supported* by the record" and that evidence would be sufficient *"if believed", rather than* requiring support by *proof of clear and convincing clarity.*

F. De novo review is required by *Rosenbloom, New York Times, Curtis, Letter Carriers, Beckley* and all of the cases decided by this court since *New York Times.*

G. We are surprised that the South Carolina court would rely on *St. Amant* since it is such square authority directly contrary to the public official. We discuss *St. Amant* in our brief and this court is thoroughly familiar with what happened in *St. Amant.* The dissenting opinion in *St. Amant,* in which only *one* judge joined, might give partial support to the South Carolina court, but that is *not* the holding of the court itself.

H. We cite in our Petition many cases which hold that the reporter was justified in relying on his sources here. Negligence and failure to investigate sufficiently are not enough, and a reporter may rely on only one side, particularly when, as here, Senator Stevens was given a chance to state his side of the story and he refused to do so. (R. 160).

I. This was *not* an admittedly unreliable source although the reporter pointed out that *"Everyone* in the article was biased to *some* extent". (R. 170) If the source in

St. Amant was not admittedly unreliable, then certainly the source here was sufficient, particularly on matters of opinion and conclusion. Plaintiff's only testimony was his own and that of his long time political ally and friend Heniford, certainly not unbiased.

J. *Gertz* is pertinent here, not on plaintiff's basis, but to show that there is no libel on expressions of opinion, ideas and conclusions. As stated by *Gertz*, "there is no such thing as a false idea".

K. There is no clear and convincing proof that defendant's publications were known to be false statements of fact, nor that defendant had serious doubts as to their truth. Accordingly, the Supreme Court of South Carolina was required to reverse the jury verdict, and judgment should now be ordered for defendant.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. _____

THE SUN PUBLISHING COMPANY, Petitioner,

vs.

JAMES P. STEVENS, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the day of April, 1978, three copies of the Petition for Writ of Certiorari were mailed by certified mail, postage prepaid, to J. M. Long, Esquire, Attorney at Law, counsel for Respondent, addressed as follows: 1114 3rd Avenue, Conway, South Carolina, 29526. I further certify that all parties required to be served have been served.

WILLIAM L. POPE
Post Office Box 944
Columbia, South Carolina 29202
Counsel for Petitioner